No. 17-1351

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, a project of the Urban Justice Center, Inc., on behalf of itself; HIAS, INC., on behalf of itself and its clients; MIDDLE EAST STUDIES ASSOCIATION OF NORTH AMERICA, INC., on behalf of itself and its members; MUHAMMED METEAB; PAUL HARRISON; IBRAHIM AHMED MOHOMED; JOHN DOES #1 & 3; JANE DOE #2, Plaintiffs – Appellees,

v.

DONALD J. TRUMP, in his official capacity as President of the United States; DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF STATE; OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE; JOHN F. KELLY, in his official capacity as Secretary of Homeland Security; REX W. TILLERSON, in his official capacity as Secretary of State; DANIEL R. COATS, in his official capacity as Director of National Intelligence, Defendants – Appellants.

On Appeal from the United States District Court for the District of Maryland, No. 8:17-cv-00361 (Chuang, J.)

BRIEF AMICI CURIAE OF SERVICE EMPLOYEES INTERNATIONAL UNION, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AND AMERICAN FEDERATION OF TEACHERS SUPPORTING PLAINTIFFS-APPELLEES

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IDENTITY AND INTERESTS OF AMICI CURIAE

The Service Employees International Union ("SEIU") is a labor organization representing approximately two million men and women in the United States and Canada employed in the private and public sectors.[1] The American Federation of State, County and Municipal Employees, AFL-CIO ("AFSCME"), is a union comprised of a diverse group of people who share a common commitment to public service. AFSCME's 1.6 million members include workers in both the public and private sectors, including over 65,000 members in Maryland.

Many SEIU and AFSCME members are foreign-born U.S. citizens, lawful permanent residents, or immigrants authorized to work in the United States. Many SEIU and AFSCME members have mixed-status families. And many SEIU and AFSCME members and their families are directly affected by the challenged Executive Order.

The American Federation of Teachers ("AFT"), an affiliate of the AFL-CIO, was founded in 1916 and today represents approximately 1.6

[1] No counsel for a party authored this brief in whole or in part, and no person or entity other than amici curiae made a monetary contribution to the preparation or submission of this brief.

million members who are employed across the nation in K-12 and higher education, public employment, and healthcare. The AFT has a longstanding history of supporting and advocating for the civil rights of our members. The majority of AFT members provide essential and necessary services, such as healthcare and education, to the public. Many of these workers are foreign-born and are currently living and working in the United States as either U.S. citizens or lawful immigrant or nonimmigrant visa holders.

The effect of the Executive Order 13769 ("EO") travel ban is paralyzing. Many foreign-born AFT members, in particular those who are from any of the six Muslim-majority countries targeted in the EO, no longer feel that they can travel freely outside of the U.S., whether it is for work or to visit a dying relative. These members fear that they will not be able to return to the U.S. to resume their professional and personal lives. The EO has thus resulted in confusion and distrust regarding the laws that should otherwise protect U.S. residents.

Further, the psychological effect of the discriminatory ban on our Muslim brothers and sisters is significant. Inclusiveness and diversity lie at the heart of U.S. values. Immigrants and visa holders move to the U.S. with their contributions in hand relying on those core American principles. The EO's unlawful discrimination against Muslims, however, isolates Muslim-Americans and immigrants. Such marginalization will strain both professional and personal relationships among Muslim-Americans and the communities they live in and serve. Given the implications that the EO will have on the lives of our members, the AFT is particularly well situated to comment on its harmful impact.

INTRODUCTION AND SUMMARY OF ARGUMENT

Executive Order No. 13769 is unlawful for all the reasons given by the plaintiffs-appellees. Among other things, the Executive Order violates the Constitution's Establishment Clause because it bars entry of individuals from six predominately Muslim countries on the basis of anti-Muslim animus. The Executive Order cannot satisfy even the deferential test under *Lemon v. Kurtzman*, 403 U.S. 602 (1971), given the extensive record of President Trump's intent to impose a "Muslim ban." The Executive Order also violates the Immigration and

Nationality Act's prohibition on nationality, place-of-birth, and place-of-residence discrimination in the issuance of visas.[2]

The plaintiffs-appellees have thoroughly explained why, for these and other reasons, they are likely to succeed on the merits of their claims. Amici write separately to support appellees' arguments regarding irreparable harm and to rebut the government's claim that family-unity harm is not cognizable. As demonstrated by the personal stories told below, the challenged Executive Order threatens several types of irreparable harm, including painful family separation, stigmatization and fear, and interference with union members' ability to do their work and serve the American public.

ARGUMENT

Executive Order No. 13769 threatens to tear families apart, in contravention of an undisputed and central tenet of the Immigration and Nationality Act: keeping families of United States citizens and

[2] 8 U.S.C. § 1152(a)(1)(A).

immigrants united.[3] President Trump's anti-Muslim Executive Order compels the separation of citizens and immigrants from their relatives living abroad in the targeted countries who are thereby barred from visiting or maintaining their familial ties. This forced family separation is psychologically devastating and associated with increased poverty and diminished access to food, health care, and educational opportunities.[4]

The challenged Executive Order generates a second kind of irreparable harm as well. The Order has facilitated and exacerbated an anti-Muslim atmosphere that has led to a documented increase in hate crimes and subjected even United States citizens to discriminatory emotional and physical abuse.[5]

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[3] *See also, e.g.*, *Kaliski v. Dist. Dir. of INS*, 620 F.2d 214, 217 (9th Cir. 1980) ("[T]he INA has a 'humane purpose . . . to reunite families.'"); *Degado v. INS*, 473 F. Supp. 1343, 1348 (S.D.N.Y. 1979) (citing 'the foremost policy underlying the granting of preference visas under our immigration laws, the reunification of families . . . .'") (quoting *Lau v. Kiley*, 563 F.2d 543 (2d Cir. 1977)).

[4] *See* Human Impact Partners, *Family Unity, Family Health* (2012), available at http://www.familyunityfamilyhealth.org/uploads/images/FamilyUnityFamilyHealthExecutiveSummaryinEnglish.pdf.

Finally, the challenged Executive Order diminishes the ability of union members to serve the American public. SEIU members, for example, work in industries that touch U.S. residents' daily lives. They help educate children, care for the elderly and infirm, keep schools and buildings clean and secure, and—notably—facilitate air travel in and out of the U.S. The Executive Order causes these members and their families to feel afraid, alienated, and insecure, and deprives them of the opportunity to be with their families—all of which inevitably interferes with their ability to do their essential work.

The effects on amici's members and their families are concrete and ongoing. To demonstrate these effects by way of example, a number of

[5] Brian Levin, *Special Status Report: Hate Crime in the United States*, Center for the Study of Hate & Extremism, California State University, San Bernardino (2016); http://csbs.csusb.edu/sites/default/files/SPECIAL%20STATUS%20REPORT%20Final%20Draft.pdf; Updated March 17, 2017 https://csbs.csusb.edu/sites/default/files/3-17%20Metro%2016-7%20Hate%20Rpt.pdf ; 115th Congress, 1st Session, RYA17243, U.S. Senate Resolution Condemning Hate Crimes, April 6, 2017, https://www.harris.senate.gov/sites/default/files /RYA17243.pdf.

affected SEIU members told their stories to union staff, and those stories are recounted below.[6]

1. Abdi

Abdi is 32 years old and has worked for the last nine years at Minneapolis-St. Paul International Airport. He is a naturalized American citizen who was born in Somalia.

Before coming to the United States, Abdi spent several years in refugee camps with his mother and siblings. While there, his education was interrupted several times. Nevertheless, once Abdi arrived in the U.S. at the age of 18, he completed high school and earned a bachelor's degree at Metropolitan State University in Minneapolis. He was then able to bring his wife and one of his three children to the U.S.

Unfortunately, visas for Abdi's two older children, aged 9 and 7, were not granted when his wife's was. As a result, Abdi's two older children still live in Somalia with his mother, who cares for them even

[6] The individuals whose stories are told below all consented to having their experiences recounted here, and records of the interviews conducted with them are on file with undersigned counsel. Some participants chose to maintain a measure of anonymity by using first names or initials only.

though she is in her 60s. Abdi sends some money but he fears they will not be able to travel to the United States to reunite with him if the Executive Order is upheld. He says, "I can't stop thinking about them. I have to be able to do this."

Abdi also worries about his and other relatives' ability to travel as Somali-born citizens. One of his aunts, an American citizen, wants to travel home to visit a sick uncle but worries about being detained on her way back. He says, "What kind of American value is this, to keep families apart?"

2. Dr. A.F.

Dr. A.F. is a second-year family medicine resident at Sutter Hospital in Santa Rosa, California, and a member of SEIU's Committee of Interns and Residents. Born in Iran, Dr. A.F. became a naturalized United States citizen in 2011. She and her family fled the Iran-Iraq war when she was a child and settled in Sweden as refugees. Dr. A.F. lived in Sweden for 13 years before her family immigrated to the United States.

On April 22, 2017, Dr. A.F. will get married in a ceremony infused with Iranian marriage traditions. "The painful irony for me is that my Iranian relatives, the people who would most love to see me married with all the elements of symbolic Persian wedding traditions, will not be able to attend my wedding because of the Executive Order barring Iranians from traveling to the United States."

Dr. A.F. hoped that her wedding would be one of the few times in her life when her family members who have been dispersed around the world for decades could all come together for a day of celebration. However, even family members from Sweden who hold both Swedish and Iranian citizenship experienced difficulty obtaining permission to enter the United States. "My cousins from Sweden were subjected to an hour of interrogation at the U.S. Embassy in Sweden when they requested a visa to come to the wedding, even though they had traveled to the U.S. many times in the past."

Dr. A.F. is completely integrated into American life and is an essential member of her hospital staff, having delivered 84 babies in the short time that she has been employed at Sutter Santa Rosa. She contributes to her community every day through her essential work treating illness and injury. But the Executive Order has undermined her feelings of belonging and being a part of American society. "I ask myself where do I belong? I know I don't belong in Iran or Sweden, but do I belong here where my friends and family are excluded because they are from a majority-Muslim country? This is very personal to me."

Although Dr. A.F. is a United States citizen, the Executive Order has made her feel powerless and vulnerable. She and her fiancé have planned a honeymoon abroad, and she worries that the Executive Order may be modified again, and that even she may be prevented from returning to her work and her home in the United States. She has lost confidence in the American institutions on which she has relied.

3. Abu Talib

Abu Talib is a 58-year old wheelchair agent at Minneapolis-St. Paul International Airport. He has lived in the United States since 2010, when he arrived from his native Sudan as an asylee. His wife, Maha, and three children followed in 2013.

In Sudan, Abu Talib was a lawyer and involved in politics, in addition to being president of his local soccer club in the city of Shendi. As a politician, he opposed the Muslim Brotherhood's imposition of religious law. As a result, the government imprisoned him for a year and, while in prison, he was tortured. Abu Talib was eventually able to come to the United States with the help of an American law professor who learned of his case while she was working at the University of Khartoum.

Now, Abu Talib, his wife (who also works at the airport), and two of his children are legal permanent residents with green cards. Two of his children live with him in Minneapolis: Sadam, who is 24 and working while attending Normandale Community College, and Sajda, who is 18 and will graduate from Kennedy High School soon. They hope to apply for citizenship next year.

Another daughter, Maab, returned to Sudan to study medicine at the University of Khartoum before obtaining her green card. Abu Talib is very afraid that because of the Executive Order he will not be able to visit his daughter and she will not be able to return to the United

States. He fears that if he visits Sudan as a legal permanent resident of the United States, he will not be allowed to return.

Abu Talib has eight brothers and sisters in Sudan. He says, "My sisters cry for me to visit them, but I am afraid to leave now." Abu Talib would also like to return to Sudan in order to sell some of his family's property, including a farm and some houses, so that he can bring the money here to start a business in his community in Minnesota.

Abu Talib says: "My life is very good here in Minnesota. I just want to be able to put my old life behind me, and focus on the future here. It's important to be able to bring my family together."

4. Sadia

Sadia is an airport worker and a part of SEIU 32BJ's airport workers organizing campaign. She is employed at Logan International Airport in Boston, Massachusetts, and is a naturalized United States citizen, born in Sudan.

A widow and the sole caretaker of her children, Sadia lives in Chelsea, Massachusetts, with her six children, ages 26, 24, 17, 16, 12 and 8. She and her children came to the United States as refugees in January 2008. In 2001, Sadia fled Sudan with her husband and children to escape political persecution by the Sudanese government. The family lived in Cameroon for almost one year before traveling to Ghana. For six years they lived in Ghana while waiting for the United States to complete their applications for refugee status. During the time that Sadia lived in Ghana, her husband tragically died.

Sadia's eldest son currently has refugee status and is awaiting approval of his application for legal residency. Her adult daughter is a legal resident, and her four minor children are U.S. citizens. However, all of Sadia's remaining family—her parents, sisters, brothers and extended family—live in Sudan. Her 80-year old father has not seen Sadia's children for more than 15 years and has never met three of her children.

Sadia knows that under the Executive Order it will be impossible for her to petition for her father to immigrate to the United States or even to invite him to visit. It is Sadia's deepest wish that her father may travel to the United States and come to know her children. "I worry that my children are isolated from my heritage and my family. We have no one in the United States. I can't afford the cost of visiting Sudan with my six children. But I dream of my children meeting my father before he dies."

While working at the airport, Sadia has been taunted and verbally abused because she wears a hijab, even though she is a loyal American. One man shouted at her "Get out of our country." Sadia believes that the Executive Order has increased the level of hostility against Muslims in the United States. "I think it shouldn't be important what religion you are. It was very painful to me to experience this treatment."

5. Sahro

Sahro is a 47-year old naturalized U.S. citizen originally from Somalia. She has worked as a wheelchair agent at Minneapolis-St. Paul International Airport for the last three years.

Sahro and her family came to the U.S. after fleeing from the civil war in Somalia. Food and water were scarce where they hid in the mountains and, during their ordeal, Sahro's two-year-old daughter died of malnutrition. Fortunately, Sahro, her husband, and their five other children—now aged 23, 19, 17, 15, and 13—made it safely to the United States.

The Executive Order affects Sahro because she wants to bring her 13-year-old niece and her own 67-year-old mother to the United States. During the civil war, her brother and his wife disappeared, leaving Sahro's niece behind. Sahro would like to adopt her niece but worries that she will be unable to reunite her family and that her niece and mother will continue to suffer from Somalia's chronic food and water shortages.

The Executive Order has had a direct impact on Sahro's work, leading to a heightened atmosphere of insecurity and discrimination. Just two weeks ago, when she scanned her badge at airport security, a TSA agent she regularly sees read her name out loud, replacing her last name with the word "ISIS." He then laughed at her, while another agent stood and watched. Sahro began crying but continued doing her job because a passenger was waiting for her to arrive with the wheelchair.

6. Marwan

Marwan is a senior organizer for SEIU, where has worked for the past 13 years. Marwan is 43 years old and is a Yemen-born naturalized U.S. citizen.

The first person in Marwan's family to arrive in the United States was his father. Marwan's father reunited the family by bringing his brothers, Marwan, Marwan's mother, and his siblings one by one to the Detroit area over the span of several decades. Marwan came to the United States in 1989 from Yemen and became a U.S. citizen in 1991. He is married with five children, aged 18, 13, 9, 6, and 3.

Many members of Marwan's and his wife's extended families remain in Yemen, where a civil war is raging. One of Marwan's brothers returned to Yemen before becoming an American citizen and lives in the capital of Sana'a with his wife and five children. Approximately six months ago an airstrike hit a military compound two hundred yards from that brother's house, shattering all the windows in the neighborhood. Marwan's nephew's arm was injured by the blast. Marwan's family's ancestral village has also been the target of rebel activity and air strikes. Nine relatives, including two of his cousins, were killed in the past three years.

Marwan's wife's three brothers and three sisters also all live in Yemen. An elderly aunt in her 80s, who helped raise Marwan as his father worked to bring him to the United States, also remains there and requires care. He worries for the safety of all his and his wife's extended family members. He says: "I think about this every day and ask myself, 'How do I bring them here?'"

If allowed to go into effect, the challenged Executive Order will make it impossible for Marwan to reunite his family the way his father did in the past. "If my dad hadn't come to the United States, I would be there right now and living under terror. I would be stuck." And now Marwan worries that more of his family members, for whom he feels responsible, will be hurt or harassed by the warring factions in his home country.

Marwan currently organizes airport workers at O'Hare International Airport. As a union organizer who interacts every day with workers who came to the United States as immigrants and refugees, he knows many other families are in the same situation. As he says: "This won't make America safe, only tear families apart."

7. Majd

Majd is a homecare worker, a member of SEIU 2015, and a naturalized citizen of the United States. She lives in San Jose, California with her husband, her two children, aged 22 and 19, and her 90-year-old mother, all of whom are also U.S. citizens. Majd was born and educated in Syria, where she worked as an agricultural engineer until she came to the United States 25 years ago.

Most of Majd's extended family emigrated from Syria to the United States, with the exception of a nephew who is in the midst of processing his application for legal permanent residency. Majd's nephew lives alone in Damascus where he fears leaving his home. Although he is not affiliated with any political organizations, he was arrested twice, interrogated, and jailed for several weeks by Syrian government agents. This experience, combined with Syria's brutal civil war and the departure of all of his family members, has plunged him into a severe depression.

Majd and her elderly mother, her nephew's grandmother, are desperate for her nephew to join them in the United States. Majd's mother suffers from diabetes, high blood pressure, heart problems, and arthritis. She fears that the Executive Order will prevent her grandson from traveling to the United States before she dies. Majd worries about both her nephew and the impact on her mother of her nephew's inability to travel to the United States.

8. Nadia

Nadia is a 21-year-old U.S. citizen, born in the United States. Her parents are both U.S. citizens and originally from Somalia. Her mother is a childcare worker and member of SEIU Local 925. While studying to become a social worker, Nadia lives at home in Washington State with her parents and three siblings.

Nadia plans to marry her fiancé, a Yemeni citizen currently residing in Saudi Arabia. Nadia was introduced to her fiancé through her parents, and she spoke to her fiancé by phone and video chat for several months before she decided to visit him in Saudi Arabia. During the month that she spent in Saudi Arabia with her fiancé, she became increasingly drawn to his kindness, thoughtfulness, and warm personality. Before she departed Saudi Arabia, Nadia and her fiancé decided to get married.

When Nadia returned to the U.S. in March 2016, she filed an immigration application for her fiancé, a K-1 "fiancé" visa. The application was approved pending a final interview at the U.S. Embassy abroad.

Nadia fears that she will face an impossible choice because of the Executive Order. Either she will have to move to Saudi Arabia to be with her fiancé, or she will have to end her engagement and live in the United States. Unable to afford travel to Saudi Arabia, she has been unable to see her fiancé and misses him dearly.

9. Edvin

Edvin, a member of SEIU United Healthcare Workers West, is a 19-year Kaiser employee and has been a chief steward for 17 years. Edvin was born in Iran and came to the United States as a 9-year-old refugee 32 years ago. Edvin is a U.S. citizen and lives in Glendale, California.

When Edvin and his parents fled Iran in the 1980s, they left several family members behind in Iran. One of Edvin's cousins, a 27-year-old woman, came to the United States eight months ago as a refugee from Iran. She was granted refugee status after having lived alone in Austria for eight months while she waited for the United States to complete processing her case. Prior to leaving Iran, she had always lived with her parents. Although she is grateful to be safe in the United States, she misses her parents terribly and assumed they would be able to come visit her, since they had traveled to the United States several times in the past.

Edvin has provided support to his cousin during her transition to life in the United States. He would like for her to be able to get the emotional support that a visit from her parents would provide and is saddened that the Executive Order will prevent families from seeing each other. "I always believed that the United States was a place that valued family relationships and encouraged loved-ones to be together. Now it seems like if you're from a Muslim-majority country, your family doesn't matter and you're treated as if you're a terrorist, no matter what your beliefs are."

* * * * *

These accounts demonstrate the harm already done by the Executive Order and the effects its announcement has had on families throughout the nation. The district court was right to enjoin the unconstitutional Order to prevent additional and unjustified family separation, stigmatization, and fear.

CONCLUSION

For the foregoing reasons, in addition to all those given by appellees, the district court's preliminary injunction should be affirmed.

DATED: April 19, 2017

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limits because it contains 3,954 words, excluding the parts exempted by Rule 32(f). This brief complies with the typeface and type-style requirements because it was prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century.

April 19, 2017 *\/s/ Claire Prestel*

CERTIFICATE OF SERVICE

I certify that on April 19, 2017, this brief was served on all parties or their counsel of record through the CM/ECF system.

April 19, 2017 *_/s/ Claire Prestel_*